IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.3965 OF 2006

Kolhapur Municipal Corporation & Ors. ...Petitioners.
Vs.
Jeevan S. Mithari & Ors. ...Respondents.

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Mr. S.S. Patwardhan for the Petitioners.
Mr. A. V. Bukhari with Mr. N. V. Bandiwadekar for Respondent No.1.
Mr. M. S. Topkar for Respondent No.2.

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CORAM : DR.D.Y.CHANDRACHUD, J.

July 17, 2006.

P.C.

This petition is directed against a judgment of the Industrial Court dated 17th December 2005 allowing relief in a batch of complaints in which it was alleged that the Kolhapur Municipal Corporation was guilty of unfair labour practices under Items 6 and 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971.

2. The Maharashtra Water Supply and Sewerage Board was initially running a Water Supply Scheme within the territorial limits of the Kolhapur Municipal Corporation. In December 1991,

the scheme was transferred by the Sewerage Board to the Municipal Corporation and since 1st January 1992, the Water Supply Department of the Municipal Corporation has conducted the scheme. It is not in dispute that initially 383 posts were sanctioned by the State Government. In the year 1992, 63 employees were appointed by the Municipal Corporation amongst whom were the complainants before the Industrial Court in this batch of cases. The witness who deposed on behalf of the Municipal Corporation admitted that the appointments of the complainants in this batch of cases were made by following due procedure and upon seeking information from the District Employment Exchange. The relevant part of the cross-examination is to the following effect :

> "It is true that their appointments were made by following due procedure such as interview, physical fitness and character verification from Police Dept. So also, their information was also called from District Employment Exchange. Employment Exchange Office was informed that the present complainants have been appointed in service of the respondent corporation. In all 63 employees were appointed in the year 1992 including the complainants. The first order was issued in respect of probation period. When sewerage and water supply scheme was transferred to K. M. C. from Sewerage Board, there were 476 posts and they were abolished. However, in fact 380 posts were filled in KMC to its water Dept. Out of these, 372 come on regular basis and 11 persons on deputation."

3. Initially nine employees amongst the sixty three, moved the Industrial Court in complaints under Items 6, 9 and 10 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. The Industrial Court found that the Municipal Corporation was guilty of an unfair labour practice and the complaints were allowed on 24th March 2003 by directing that the employees concerned be made permanent with effect from 6th October 1997. The Municipal Corporation challenged the decision of the Industrial Court before this Court. At the hearing of the petition, the Corporation relied upon on a Government Resolution dated 20th October 2001 directing it to reduce its establishment expenses to a level of 35% of the expenditure and, until then not to fill up vacant posts. The attention of the Division Bench was, however, drawn to a subsequent communication dated 28th August 2003 of the State Government by which Government agreed that in the matter of absorbing the daily wage employees of the Water Supply Department, the Municipal Corporation may follow the law. The Division Bench held that in view of the letter dated 28th August 2003, the Government Resolution dated 29th October 2001 shall not affect the regularisation of nine employees. The Division

Bench also made it clear that it is not open to the State Government to direct anything to the contrary in view of the order passed by a competent Industrial Court. The petitions were accordingly disposed of.

4. The order passed by the Industrial Court requiring the regularisation of services of nine complainants in the earlier batch of cases has been complied with by the Municipal Corporation. It has not been disputed before this Court that the case of the Respondent-workmen stands on the same footing as those of the workmen who were before this Court in the proceedings which culminated in the order of the Division Bench. The fact which is undisputed is that the Respondents were senior to those nine employees who came to be regularised in pursuance of the earlier order of the Industrial Court. In fact, it would be material to note that the Municipal Corporation has passed a resolution on 19th January 2006 agreeing to abide by the decision of the Industrial Court in the matter of regularising the services of the workmen governed in these proceedings. It is thereafter that this Court has been moved in writ proceedings that were instituted sometime in June 2006.

5. Counsel appearing on behalf of the Municipal Corporation stated that as a matter of principle, the Municipal Corporation has no objection to complying with the order of the Industrial Court particularly having regard to the fact that sanctioned posts are in fact, available. However, it has been submitted that the only difficulty which the Corporation perceived is the direction that has been issued by the State Government. Counsel appearing on behalf of the Municipal Corporation has adverted to a Government Resolution dated 13th May 1999 in which the State Government had sanctioned a proposal to create 618 posts, and for the filling up of those posts in exercise of its power under Section 51(4) of the Bombay Provincial Municipal Corporations Act, 1949. The State Government, however, imposed a condition to the effect that within a period of three years, the total establishment expenditure of the Municipal Corporation should be reduced to a level of 35% of the total expenditure failing which no vacant post in Class III and/or IV should be filled up. Subsequently on 30th October 2002 the aforesaid condition in the G.R. dated 13th May 1999 was relaxed so as to allow the Municipal Corporation to fill up 322 posts comprising of the backlog of backward class

candidates. In the meantime, the Municipal Corporation had moved the State Government on 9th June 2003 for complying with the order of the Industrial Court in regard to the earlier batch of nine workmen who had moved the Court for the relief. With reference to the aforesaid letter of the Municipal Corporation, the State Government clarified by its letter dated 28th August 2003 that the Municipal Corporation was authorised to take appropriate action in accordance with law. The Division Bench has, in the judgment noted above, relied upon the communication dated 28th August 2003 of the State Government, which communication authorised due compliance of the order of Industrial Court. That apart, the Division Bench noted that in view of an order passed by a Court of competent jurisdiction, it would not have been open to the State Government to issue any administrative direction to the contrary.

6. The witness who deposed on behalf of the Municipal Corporation in the present cases has specifically admitted that there is a need for additional staff; that as far back as on 10th April 1993, the Corporation has resolved to create additional posts in the Water Supply Department; that regular employees working in the

Water Supply Department had either retired and vacant posts have not been filled in; and that the employees who have been regularised are junior to the workmen in the present batch of cases. In this view of the matter and particularly since the Municipal Corporation has accepted the order passed by the Division Bench of this Court, which confirmed the earlier judgment of the Industrial Court, no distinction can be made in so far as the batch of present workmen is concerned. The complainant workmen in the present batch are in fact senior, to those regularised. In so far as the backlog of posts of Backward Classes is concerned, the State Government has specifically by its G.R. dated 30th October 2002 authorised the filling up of 322 posts in relaxation of the conditions contained in the earlier G.R. dated 13th May 1999 in order to fill up the backlog. Mr. Patwardhan appearing on behalf of the Municipal Corporation states that four of the workmen in the present batch of cases belong to the reserved categories. The unfair labour practice under Item 6 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, consists of keeping workmen as Badlis or temporaries for several years together with a view to depriving them of the benefits of permanency. The ingredients of

an unfair labour practice under Item 6 have been held to be established by the Industrial Court. The Industrial Court has also adverted to Model Standing Order 4(c) and 4(d) under which there is an obligation to give the benefit of permanency upon the completion of 240 days of service. The workmen in the present case have admittedly worked for nearly 15 years. In this view of the matter, the order passed by the Industrial Court does not warrant interference under Article 227 of the Constitution. The petition is dismissed.

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